



The Business of War: How Criminal Organizations Perpetuate Conflict and What To Do about It

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It is now a mantra that building local institutions is essential to winning the counterinsurgency (COIN) fight. The host nation must exercise sovereignty and provide necessary security and services to its citizens. However, institution building requires more than a focus on governance and capacity development programs. The criminal structures that commonly arise during war economies inhibit the proper growth of state institutions, limiting the state's ability to defeat insurgencies. The military should provide support for law enforcement activities that attack such organizations and tip the balance in favor of honest officials and more productive institutional development.

The views expressed herein are those of the author and do not necessarily represent the position of the US Army/US Marine Corps Counterinsurgency Center, the US Army, or any other agency of the US government.

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This article first explores the nature and type of criminal activities found in transitional states, then discusses options for addressing such activities in the midst of conflict and stability operations, and closes by addressing the legal and policy considerations shaping the Defense Department's current position on the issue. Attacking criminal organizations is an essential element of the COIN fight; the prevailing policy restricting military support for law enforcement operations should be reconsidered.



Soldiers from B Company, 1-27 IN, 25th ID, patrol in Istaqal Qada, Iraq, July 2008.

A Political Economy of Civil Conflict ¹

War is a profitable business. Enterprising individuals in the midst of it look for the chance to make money, as do entrepreneurs in any other business environment. The absence of state enforcement mechanisms during conflict creates opportunities for individuals to pursue profits through what would normally be illegal activities, such as the creation of extortion rackets and the trafficking of illegal goods. Often, these criminal activities involve some level of complicity by host government actors.

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State Institutions and Criminal Organizations

It can be tempting to think that cultures of corruption are so deeply engrained in transitional societies that no measure of assistance or force will reverse the slide. Yet it may be that this corruption is neither culture-specific nor impossible to correct.²

Citizens normally rely upon state institutions to create a framework of law and order. As conflict occurs and state institutions fail, groups in society seek other mechanisms for ensuring their survival.

Some actors will exploit a lack of state institutions to pursue profitable activities that ultimately undermine the ability of the state to develop. Over the course of a conflict, powerful criminal groups develop a strong interest in protecting and maintaining the businesses they have established. For example, a drug trafficking ring that emerges in war-torn Afghanistan has every interest in continuing these profitable activities after hostilities end.

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However, a state that can effectively fight insurgencies can also threaten criminal activities. Consequently, these groups frequently develop cooperative relationships with certain government officials, and what some experts have referred to as a “political criminal nexus” develops around illicit enterprises.³ Thus, as U.S. and honest local officials are trying to build governing institutions, criminal networks undermine these efforts.

The General Accounting Office (GAO) described a case in point in its review of the implementation of the Dayton Peace Accords in Bosnia. The GAO concluded that crime and public corruption were so interlinked

and pervasive in Bosnia that the benchmark withdrawal date for the NATO-led forces would not be met. The GAO noted that “wartime underground networks have turned into political criminal networks involved in massive smuggling, tax evasion, and trafficking in women and stolen cars,” and that these networks were undermining the proper development of Bosnian institutions.⁴

The criminal economy that emerges during conflict creates an insidious cycle of instability.

The criminal economy that emerges during conflict creates an insidious cycle of instability. When the public witnesses the corruption and weakness of state institutions, it loses confidence in those institutions, and looks elsewhere for support and stability. Ironically, the public can come to view insurgent groups and even criminal networks as potential providers of an alternative stability. Afghanistan provides a current case in point, where some locals are now expressing a preference for Taliban over corrupt police units.⁵ Attacking this cycle of instability is essential to winning the COIN fight.

Forms of Criminality

This cycle of instability typically takes three forms in transitional societies: trafficking and smuggling; extortion rackets; and public contracting and land abuses. Criminal organizations may conduct any number of these activities, undermining state institutions in the process. It is such deeply engrained organized crime, rather than one-off petty crimes, that most threaten the COIN fight, and against which military resources could justifiably be used.

Trafficking and Smuggling

Perhaps the most publicized form of conflict crime is trafficking and smuggling. Institutions fail, state borders become porous, and profit-seekers traffic illicit goods and smuggle licit goods, often in cooperation with state officials.

Criminal organizations will traffic a wide variety of illegal goods. Drugs are arguably the most profitable. The Tajik civil war from 1992 to 1997 was fought partly as a territorial battle for drug trafficking.⁶ According to some reporting, the organizations supporting the Afghan drug trade have infiltrated the state to such a degree that police divisions in parts of the country have sometimes been thought to operate more as pro-



Soldiers from B Company, 1-15 IN, 3d ID, conduct a cordon search and seizure outside Combat Outpost Carver, Iraq, March 2008, on a house that was occupied by an al-Qaeda operative. (US Army photo by SPC Daniel Herrera)

tection rackets for the trade rather than legitimate security organs of the state.⁷ The drug cartel problems in South America have spread north and infiltrated parts of the Mexican government.⁸

Trafficking does not have to be in illicit goods to undermine the state's authority. The large-scale theft of natural resources, products that could be legally extracted and sold, deprives legitimate businesses of growth opportunities and further delegitimizes state institutions that are often complicit in the activities.

Many are familiar with Hollywood's depiction in *Blood Diamond* of the large-scale extraction of diamonds from Sierra Leone during the civil war. Not depicted in the movie is the fact that members of the Sierra Leonean military were also heavily involved in trafficking such diamonds.⁹ Parts of the Cambodian military smuggled the country's timber during its conflict with the Khmer Rouge, at one point reaching a deal with eighteen Thai companies to export over 1 million cubic meters of logs.¹⁰

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Criminal trafficking in transitional countries is often commonly known throughout the populace. Such knowledge further disenfranchises a population looking for reliable institutions. Without constraining such criminal activities, a government cannot enfranchise the people and develop the kind of loyalty necessary to defeat insurgent groups.

Extortion Rackets

Various forms of extortion are also common to transitional environments, and are often prosecuted by former or disgruntled soldiers or militia who develop continually more sophisticated networks to pursue their

ends. These can include protection rackets, kidnapping for ransom, and other racketeering activities.

Government personnel in Afghanistan have been implicated in running extortion rackets, doing such things as stopping and illegally taxing truck drivers as they transit the country.¹¹ Reports in 1994 indicated that soldiers of the Royal Cambodian Armed Forces were running extortion and protection rackets that, by some estimates, were responsible for sixty to seventy percent of the abuses committed against the civilian population.¹²

Unbridled extortion leaves the population with little faith in the government's ability to provide security and reliable services, and undermines the state's ability to tax (nobody wants to be taxed twice).

Any time state institutions are being rebuilt or refashioned, substantial opportunity for the growth of criminal influence exists.

Where the state cannot collect sufficient revenues to run its operations, where central institutions like the military lack legitimacy, and where security forces are often implicated in extortion rings, a country cannot develop institutions strong enough to fight insurgencies.

Public Contracting and Land Abuses

Criminal organizations in transitional societies may also seek to prey on government officials to access lucrative public contracts or gain property rights through underhanded means. For example, in former Soviet states firms have sometimes inappropriately collaborated with government, positioning themselves for winning bids for public contracts, selling licenses, or providing advanced privatization information.¹³ Members of the Cambodian government are reportedly involved in illegally granting concessions to portions of the country's oil resources.¹⁴ UN re-



Soldiers from B Company, 2-508th Parachute Infantry Regiment, search for weapons caches in Bagi Khel, Afghanistan, September 2007. (DoD photo by SSG Marcus Quarterman)

ports have hinted at corruption in the public contracting and leasing of Afghan mineral resources.¹⁵

Criminal syndicates in transitional societies also covet land possession, and stand to benefit greatly from ownership rights. Much of the problems blocking peace in El Salvador dealt with land distribution quarrels.¹⁶ In the Sudan, conflict is perpetuated by the desire to control land, which allows

access to water and mineral resources.¹⁷ At one point in 2007, the Afghan minister of urban development claimed that powerful groups were stealing land at the rate of 0.8 square miles a day, and then selling it illegally.¹⁸

The general population is often aware in such countries of the criminal gains that deprive them of fair access to lands, business contracts, and opportunities writ large. A country cannot build state institutions on such a weak foundation.

Fighting Criminal Syndicates in Transitional Environments

Any time state institutions are being rebuilt or refashioned, substantial opportunity for the growth of criminal influence exists. Military doctrine must be sensitive to the need to utilize resources in a way that limits criminal growth and tips the balance in favor of healthy state institutions. If state institutions have already become infected by criminal syndicates, different approaches might be required to address the problem.

The Objective

Criminal syndicates are motivated by profit, and operations to counter the growth of criminal organizations should make the costs of engaging in such activities too high to justify their continued pursuit.¹⁹ The objective should be to make clear that criminals will be apprehended and imprisoned, *and their profits destroyed*, if they continue activities that undermine state institutions.

The military should consider developing a “cumulative approach” to counter criminality.²⁰ Such an approach would conceive of solutions appropriate to the evolving political economy of the various stages of conflict and stabilization. It would, foremost, require a developed understanding of the composition and activities of the criminal organizations operating in the relevant area.

The Importance of Intelligence

As is often the case with attacking insurgent organizations, the field commander must develop as complete a picture as possible of the target criminal organization. Developing a structural picture of the particular syndicate will make evident which individuals are vital to the criminal enterprise’s ongoing capabilities, and which are peripheral. Identifying the main sources of funds and activities will permit a comprehensive approach to combating the network, ensuring its extinction.²¹

But proper intelligence is only the beginning. Since such intelligence often cannot be used in court, it is necessary to integrate the military’s activities with law enforcement agencies that can help ensure proper convictions.²²

In conjunction with law enforcement, military operators can pursue a “dismantlement” strategy that seeks to break apart the organization piece by piece.

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Soldiers from C Company, 2-505th Parachute Infantry Regiment, prepare to support Iraqi police as they maintain order during Iraqi elections, January 2009.

Exploit Internal Fissures

When criminal syndicates develop vast resources and span multiple levels of the government and countryside, it may be neither desirable to attack them head-on nor possible to develop a complete picture of the organization's structure at the provincial level.²³ In conjunction with law enforcement, military operators can pursue a "dismantlement" strategy that seeks to break apart the organization piece by piece.²⁴

Such an incremental approach is analogous to the process of "turning" informants in the U.S. law enforcement context, or the "supergrass" process in Northern Ireland, wherein the authorities gave

individuals immunity and relocated them in exchange for providing visibility on the organization and testifying at trial. Such an incremental approach can avert the type of direct conflict that a frontal assault may risk given the violent capabilities of advanced criminal networks, while weakening such networks to the degree that a final, direct assault (arresting top ringleaders) may eventually be possible.

Information warfare may be another tool available to weaken criminal syndicates. It could be possible to exploit knowledge of internal disagreements by injecting disinformation that encourages organizational breakdown and defections from the organization that can support law enforcement efforts to eventually destroy it.

There is an array of ways that the military can cooperate with and support law enforcement entities in attacking and dismantling criminal syndicates.

Support for Search, Seizure, and Trial

Field commanders can consider the range of options available for providing logistical and force support for enforcement operations against criminal syndicates. Direct support for law enforcement operations can create multiple legal complexities (some of which are addressed below), which include problems with chains of custody for evidence that must be used at trial. Moreover, training soldiers to execute the nuances of a law enforcement action may not be feasible. Therefore, the most desirable options may involve cooperation with those agencies that have the necessary law enforcement expertise.

Cooperation with local police, using the example of the British military's relationship with the Royal Ulster Constabulary during the counter-insurgency operations in Northern Ireland as a model, illustrates one approach.²⁵ Such cooperation with local forces is, understandably, the most

appealing diplomatic option, and provides the greatest assurance of familiarity with local dynamics.

The military can also integrate specialized U.S. law enforcement units with normal forces as they report to their respective areas of responsibility.²⁶ This option may be most appealing during the outset of hostilities, given the possible breakdown of host institutions as U.S. forces move into an area. A closely related alternative involves cooperation with U.S. law enforcement agencies that are not part of the military, but can provide similar expertise.

Various alternatives for actually administering justice once captives have been taken also have to be considered. Again, the most appealing option would be utilizing host country courts, judges, and attorneys. Such institutions may be temporarily dysfunctional, however, or may not have functioned adequately before the onset of operations. Under certain circumstances, then, opportunities may also exist for using military tribunals.²⁷ Again, this option may be more relevant at the onset of hostilities, but become less desirable as local sovereignty is eventually established. Finally, some stability operations have utilized international judges and prosecutors while local institutions could be rebuilt and develop sufficient confidence to enforce the law against powerful criminal syndicates.²⁸

Transparency Efforts

Finally, commanders can consider the options available for simply making public accounts and activities more transparent to the local population. The poten-



Soldiers from A Company, 1-27th IN, 25th ID, demonstrate proper methods for maintaining control of suspected criminals to police in Istaqlal Qada, Iraq, December 2008.

tial exists for publication, on a local level, of government-budgeted projects. Such publication would at least alert local residents to those activities that may be subject to abuse, and make evident when such abuse is occurring.

Increasing Cooperation

There is an array of ways that the military can cooperate with and support law enforcement entities in attacking and dismantling criminal syndicates. These types of support roles may properly balance the need to allocate resources primarily to countering insurgent activities, while still recognizing the essential nature of fighting criminal syndicates to a successful COIN strategy.

Legal and Policy Considerations

Some may argue that military support for law enforcement operations is *illegal* according to U.S. law. While this may be true, with caveats, in domestic situations, there is strong support that the applicable law *does not apply* extraterritorially. Rather, it seems that the Defense Department's own policy pronouncements provide the primary boundaries for potential military involvement in law enforcement operations overseas. Adjusting that policy to allow the military to provide certain types of support to law enforcement activities in conflict environments seems essential to enabling the full-spectrum of necessary COIN tools.

Posse Comitatus and 10 U.S.C. 375

The *Posse Comitatus* Act essentially prohibits the military from exercising a domestic law enforcement function.²⁹ A more recent law, 10 U.S.C. 375, orders the Secretary of Defense to issue regulations ensuring that no military personnel will engage in searches, seizures, or arrests. According to analysis performed by the Justice Department, however, nei-

ther of these statutes appear to apply to military operations occurring overseas.³⁰

The legal nuances of the debate about 10 U.S.C. 375 are beyond the scope of this article. Suffice it to say that the military can legally support certain types of law enforcement functions under current law.³¹

Defense Policy on Military Support for Law Enforcement Activities

It seems that the most significant road block for creating military-supported solutions to conflict criminality lies in adjusting the Defense Department's own policies. Current Defense policy prohibits activities in support of the core law enforcement functions mentioned in section two: searches, seizures, and arrests. Department Directive 5525.5 on "DoD Cooperation with Civilian Law Enforcement Officials" provides that restrictions on military involvement in "direct assistance" outside of U.S. territory shall be subject to the case by case approval of the Secretary or Deputy Secretary of Defense.³² This is a high hurdle. A comprehensive strategy to solve the problem of conflict criminality would be hampered by submitting every action for top-level approval, and would ultimately be

inimical to the operational flexibility that field commanders require.

The Defense policy is likely driven by sensitive diplomatic considerations for the potential impact of performing such activities where local institutions and populations may be hostile to perceived infringements on sovereignty by U.S. forces. However, in situa-



A Soldier in the 66th MP Company, based in Fort Lewis, Washington, trains Afghan National Policemen on vehicle searches in Nangarhar Province, Afghanistan.

tions where sovereignty has not yet been established, recent experience has proven the degree to which occupying forces can be blamed for rampant criminality (e.g., post-invasion Iraq). Also, the failure to fully attack criminality early on can allow pervasive corruption to later undermine the COIN effort and those governing institutions that do develop. The current dissatisfaction amongst Afghans with the Karzai government seems to be evidence of this theory.

Moreover, during stability operations, even when local sovereignty has been established, host institutions may actually desire military support in attacking criminals that undermine their authority, and grant such support through subtle agreements. Regardless, U.S. forces would obviously not support such activities once sovereignty is established without a clear understanding with the host government that such support was desired.

If counterinsurgents do not address criminality, they are in danger of missing a critical opportunity to invest resources more effectively.

A second policy consideration is likely driven by concern over diverting resources away from a COIN mission to a law enforcement mission. However, the two missions are indistinguishable. The COIN fight can never be won where criminal organizations run the economy and have so infected a government that the people do not acknowledge its authority or recognize its legitimacy.

Conclusion

The military has shown an incredible ability to adapt to the requirements of modern warfare. It has substantially adjusted its doctrine, incorporated lessons learned, and expanded cooperation with civilian agencies over the last several years. This process has involved an acknowledgment that to succeed in the COIN fight, the strategist must envision a full spectrum of operations. There is no reason to stop that willingness to refine our understanding of mission requirements now. As Iraq and Afghanistan both progress in their own right, the importance of providing strong institutions by combating criminal syndicates is more apparent. The Defense Department should exercise the adaptability for which its military branches are known, and reconsider policies that inhibit this essential element of the modern COIN fight.

If counterinsurgents do not address criminality, they are in danger of missing a critical opportunity to invest resources more effectively. After all, the ultimate goal is to shape the environment for sustainable, *legal* livelihoods that are more desirable than conflict. If COIN operations do not do so, the seeds of disorder will never quite be destroyed, and an insurgency will always find fertile ground. As a Lebanese militia member once told me when I acted shocked at his desire to return to the days of the Lebanese civil war, "The economy was good back then."³³

Endnotes

¹The term "civil conflict" describes any destabilized environment where state institutions have broken down and armed, sub-state elements are in conflict with internal or external actors. The concern here is not to define "civil war", but to emphasize the breakdown of host institutions and the economic framework that emerges as a result.

²Though economists are fond of saying that corruption can be efficient, they are often referring to a moderated form of corruption that facilitates the completion of bureaucratic functions where civil servants are underpaid. Whatever the moral implications of that observation may be, it is critical to distinguish between such corruption and the far

more insidious criminal networks that corrupt the government, undermine state authority, and fuel the insurgency. Such networks are the subject of this paper.

³ Roy Godson, "Transnational Crime, Corruption, and Security," in *Grave New World: Security Challenges in the 21st Century*, ed. Michael E. Brown (Washington, DC: Georgetown University Press, 2004), p. 259.

⁴ U.S. General Accounting Office, "Bosnia Peace Operation: Crime and Corruption Threaten Successful Implementation of the Dayton Peace Agreement," report to Congressional requesters (Washington, DC, July 2000), p. 2, 4, www.gao.gov/new.items/ns00219t.pdf.

⁵ Chris Sands, "Bring back Taliban to End Police Corruption, Say Afghan Truckers," *The Independent*, May 10, 2007, <http://www.independent.co.uk/news/world/asia/bring-back-taliban-to-end-police-corruption-say-afghan-truckers-448174.html>.

⁶ Phil Williams and John T. Picarelli, "Combating Organized Crime in Armed Conflict," in *Managing the Resource Dimensions of Civil War*, ed. Karen Ballentine and Heiko Nitzschke (Boulder, CO: Lynne Rienner, 2005), p. 126.

⁷ Doris Buddenburg and William A. Byrd, eds., *Afghanistan's Drug Industry: Structure, Functioning, Dynamics, and Implications for Counter-Narcotics Policy* (United Nations Office on Drugs and Crime and The World Bank), p. 198-202, <http://siteresources.worldbank.org/SOUTHASIAEXT/Resources/Publications/448813-1164651372704/UNDC.pdf>.

⁸ "On the Trail of the Traffickers," *Economist*, March 7, 2009, p. 30-3.

⁹ David Keen, "Incentives and Disincentives for Violence," in *Greed and Grievance*, ed. Mats Berdal and David Malone (Boulder, CO: Lynne Rienner, 2000), p. 35-6.

¹⁰ Mats Berdal and David Keen, "Violence and Economic Agendas in Civil Wars: Some Policy Implications," *Millennium: Journal of International Studies* 26, no. 3 (1997), p. 804.

¹¹ Sands, "Bring back Taliban."

¹² Berdal and Keen, "Violence and Economic Agendas," p. 812.

¹³ Goodson, "Transnational Crime," p. 265.

¹⁴ Global Witness, *Country for Sale: How Cambodia's Elite Has Captured the Country's Extractive Industries*, February 2009, www.globalwitness.org/media_library_get.php/774/1234634013/country_for_sale_low_res_english.pdf.

¹⁵ United Nations Office on Drugs and Crime, *Fighting Corruption in Afghanistan: A Roadmap for Strategy and Action*, Informal Discussion Paper, February 16, 2007, p. 7, http://www.unodc.org/pdf/afg/anti_corruption_roadmap.pdf.

¹⁶ Berdal and Keen, "Violence and Economic Agendas," p. 810.

¹⁷ Keen, "Incentives and Disincentives," p. 30.

¹⁸ Stephanie Irvine, "Powerful 'Grab Afghanistan Land,'" *BBC News*, September 6, 2007, http://news.bbc.co.uk/2/hi/south_asia/6981035.stm.

¹⁹ Williams and Picarelli, "Combating Organized Crime," p. 136.

²⁰ *Ibid.*, p. 137.

²¹ Williams and Picarelli, "Combating Organized Crime," p. 142.

²² United States Institute for Peace (USIP), *Lawless Rule versus Rule of Law in the Balkans*, Special Report No. 97, December 2002, <http://www.usip.org/pubs/specialreports/sr97.html>.

²³ Rensselaer Lee and Francisco Thoumi, "The Criminal-Political Nexus in Colombia," *Trends in Organized Crime* 3, no. 1 (1997), p. 65.

²⁴ *Ibid.*

²⁵ Williams and Picarelli, "Combating Organized Crime," p. 147.

²⁶ *Ibid.*, p. 146.

²⁷ LTC Geoffrey Corn, "The Viability of Using Military Courts to Enforce Law in Post-War Iraq," *Jurist*, May 29, 2003, <http://jurist.law.pitt.edu/forum/forumnew111.php>.

²⁸ USIP, *Lawless Rule versus Rule of Law*, p. 12.

²⁹ 18 U.S.C. § 1385.

³⁰ 13 Op. Off. Legal Counsel 1989.

³¹ Counternarcotics exists in a legal world of its own, and is not addressed here, though new Department of Defense policy does expand the options in that realm, as well.

³² DoD Directive 5525.5, "DoD Cooperation with Civilian Law Enforcement Officials" (January 15, 1986), p. 5. (Though this directive also clearly states that it does not apply to military support for foreign law enforcement agencies, in practice similar restrictions apply.)

³³ Anonymous Lebanese militia member, interview by author, Beirut, Lebanon, September, 2005.